

## THE EMPLOYER OFFENSIVE: ANTI-UNIONISM AND LOCKOUTS

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Government austerity measures which target public sector unions, legislative attacks on union rights, and employer aggression are widespread in many countries. In this context of intensified employer and state anti-unionism, a phenomenon of growing significance is the lockout. The discussion of lockouts addresses definitional issues, the difference between offensive and defensive lockouts, and the available statistical data. Although many countries do not differentiate between strikes and lockouts, in those countries that do (namely, Canada, Australia and Germany), the data reveal distinctive patterns, in particular, the increasing proportion of stoppage days linked to lockouts, and the tendency for lockouts to be considerably longer than strikes.

The paper considers four themes: first, the adoption of lockouts by employers in an increasingly wide range of sectors; second, lockouts as an employer tool for casualizing unionized workforces and thereby increasing the precarity of work; third, the use of lockouts by multi-national corporations which leverage their cross-border status to intimidate workers; and finally, the role of the state in responding to lockouts, most often in support of employers. This paper concludes that lockouts have moved from what are traditionally understood as defensive responses to worker militancy to overtly offensive strategies which support anti-union agendas.

### Anti-Unionism

Government austerity measures which target public sector unions, legislative attacks on union rights, and employer aggression against unions and unionized workers are widespread in many countries. Such anti-unionism is increasing both despite and because

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of the decline in the standard employment relationship and the deregulation of labor markets which have been coincident with dramatic drops in union densities.

Dundon and Gall (2013) point to a sustained pattern of anti-unionism, that is, “a conscious, deliberate decision to undermine and erode ... workplace collective unionisation and union organisation” (1). Their 2013 book details patterns of anti-unionism in the US, UK, Germany, Ireland, and Australia among others. It offers evidence of co-operation and collusion among employers, governments and state agencies in promoting anti-unionism. They argue that “employer practices cannot be divorced from the motives of government and state agencies.” Further, “the state may also engage in its own anti-unionism to reconfigure the balance of power between capital and organised labour, as evidenced by the likes of the Howard and Thatcher governments in Australia and Britain, respectively” (3, 6). Within this context, the lockout is a phenomenon of growing significance. The convergence of interests between and among employers, states and governments, and in some cases outright collusion informs the following discussion

## **Lockouts**

### *What is a lockout?*

A lockout is defined by the International Labour Organization (ILO) as follows: “A lockout is a total or partial temporary closure of one or more places of employment, or the hindering of the normal work activities of employees, by one or more employers with a view to enforcing or resisting demands or expressing grievances, or supporting other employers in their demands or grievances.”<sup>1</sup>

Few scholars have examined lockouts as a phenomenon. An early discussion by a business lawyer (Maddux, 1967) differentiated between a defensive and offensive lockout: the former a response to a strike threat, and the latter “an offensive tactic, prior to actual or threatened strike action, to enhance an employer's bargaining position” (1095). This distinction continues to be salient. In a similar vein, Leroy (1996: 986-7) distinguished between “a more traditional and less confrontational lockout, in which employers cease

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<sup>1</sup> <http://laborsta.ilo.org/applv8/data/c9e.html>

operations for the duration of the lockout” (989) or respond to “a union's actual or threatened use of economic weapons” (1029), and what he calls “replacement lockouts” which he characterizes as an “aggressive employer initiation of labor disputes.” He finds the common elements in these disputes are that employers “exploit their superior bargaining power in initiating replacement lockouts” (1029), offer “terms that were impossible to accept” (1031), and use “unsavoury” justifications about worker sabotage (1032), often with the goal of breaking the unions” (1038).

In Canada, as in many countries, lockouts are governed by the same kind of procedural rules as strikes. Generally, this means that lockouts are prohibited during the term of a collective agreement, what is sometimes known as the peace obligation. A legal lockout, then, takes place during negotiations, and only after mediation and conciliation procedures prescribed by statute have been exhausted (Arthurs *et al.* 1993: 288). Unusually, in the US, mid-term strikes and lockouts are often a subject of negotiation. In some countries such as Portugal, lockouts are illegal.<sup>2</sup> In others, the right to strike is given “a legal basis but is subject to limitations” but lockouts are “rarely mentioned” in legislation (van der Velden, 2007: 15). In Australia, lockouts were once regarded as “historical curios” (Cooper et al, 2009: 344). However, in the employer-state collusion of the 1990s, this changed dramatically. Lockout law was liberalized and employers were permitted to use lockouts to coerce employees into signing individual and non-union agreements.

### *Statistical data on lockouts*

Very few countries differentiate between strikes and lockouts in their published statistics. The ILO database of labour statistics provides multiple data sets for over 100 indicators and 230 countries, areas and territories. However, the data do not disaggregate strikes and lockouts.<sup>3</sup> The UK “abandoned distinguishing lockouts from strikes as early as 1895 as it was ‘impracticable’ given how they often shade into one another” (Lyddon, 2007: 25). In the United States, the Bureau of Labor Statistics (BLS) does not distinguish

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<sup>2</sup> <http://www.fedee.com/labour-relations/industrial-relations-across-europe/>

<sup>3</sup> <http://www.ilo.org/ilostat/>.

between strikes and lock-outs in their data; both are included under the rubric of work stoppages.<sup>4</sup>

Several issues have influenced the decision not to distinguish between strikes and lockouts. Although lockouts are covered by the same procedural rules as strikes in most countries, what constitutes a lockout is sometimes murky, so, in some instances, unions claim a lockout and employers dispute this. The legal understanding of lockout often contains a further element of subjectivity. In Canadian law, “the critical factor in determining whether a lockout exists is the employer’s motive for suspending operations or refusing to continue employment. The employer is free to make legitimate business decisions to suspend or close operations, and these must be distinguished from closures or suspensions designed to force concessions from the union” (Arthurs *et al* 1993: 272-3).

As a result of these apparent but not insurmountable complexities, it seems that lockout data are only available from Germany, Australia and Canada, and only Canada has comprehensive and multi-variable data. In Germany, the stoppage data distinguish between strikes and lockouts in terms of days not worked, and the number of workers involved (Lyddon, 2007: 25). The data collected by the Australian Bureau of Statistics (ABS) represent a conservative estimate because the definition of a “lockout” excludes many forms of withdrawal of work by employers. Like other jurisdictions, ABS argues that it is “too difficult to distinguish lockouts from other types of disputes - especially where there are conflicting claims by the parties involved in the dispute as to whether it is a strike or a lockout” (Briggs, 2004: 105). As a result of these exclusions, Briggs compiled a Database on Lockouts in Australia (LAD) based on legal judgments and transcripts, surveys of industrial tribunal commissioners and union officials, media searches, and letters to firms identified as having engaged in a lockout. He concluded that only 30% of lockouts were included in official statistics (Cooper et al., 2009: 341).

Canada may be the only country that collects systematic and multi-variable information about lockouts.

Data on every work stoppage in Canada are recorded by the Workplace Information and Research Division (WIRD) which is part of Employment and Social Development

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<sup>4</sup> <http://www.bls.gov/wsp/>

Canada (ESDC).<sup>5</sup> The data set includes strikes and lockouts (although the variable for lockouts was only added in 1976) which are a minimum of half a day in length and involve ten or more person-days lost (PDL). Person-days lost (sometimes referred to as time lost) are understood as the duration in working days multiplied by the number of workers involved. Workers indirectly affected, such as those laid off as a result of a work stoppage, are not included in the data. The detailed record for each stoppage (both strikes and lockouts) of ten or more PDL contains a wealth of additional information: issues, contract status, result, sector, province, metro/city, NAICS [North American Industrial Classification System] code,<sup>6</sup> jurisdiction, affiliation, union status (various, single, unorganized), as well as information on rotating strikes.

Although strikes and lockouts are coded differently in the ESDC data and can be disaggregated, WIRD has handled the problem of permeability between strike and lockout, and the potential difficulty distinguishing between them in the following way. A stoppage is coded as a lockout “if the stoppage involved only a lockout or if both a strike and a lockout occurred.” As a result, strike and lockout are not mutually exclusive categories. Although this approach may limit the “utility of the distinction” (Lyddon, 2007: 25), the fact that so many lockouts are identified in the data, and that significant patterns around lockouts emerge confirms the importance of collecting such data.

#### *What lockout data reveal*

Those countries that do disaggregate strike and lockout data show distinctive patterns for lockouts, and research projects such as the LAD database in Australia also demonstrate the importance of differentiating between strikes and lockouts. Without such data, the employer offensive can be obscured. Leroy (1996) highlights this problem. Using

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<sup>5</sup> To access data on work stoppages, go to

[http://www.labour.gc.ca/eng/resources/info/datas/work\\_stoppages/index.shtm](http://www.labour.gc.ca/eng/resources/info/datas/work_stoppages/index.shtm)

I have negotiated full access to the records on each Canadian stoppage from 1946-2012, although this paper focusses on data from 1976 when lockouts began to be collected. I wish to thank the Workplace Information and Research Division,) and especially Victoria Hanga for providing the microdata on all work stoppages in Canada. All ESDC data quoted in this paper are from the work stoppage data unless otherwise specified.

<sup>6</sup> As used in Canada, NAICS breaks out sixteen industry groupings. For more information, see <http://www23.statcan.gc.ca/imdb/p3VD.pl?Function=getVD&TVD=118464>

documentation from the National Labor Relations Board (NLRB) in the US, he found that lockouts (especially “replacement lockouts” where employers lock out employees and then continue operations with replacements) were the main weapon of employers in the 1990s, a reality masked by the fact that the US government collects no specific data on lockouts (986-7).

Examining those countries where lockout data have been collected is instructive. In Germany, lockouts account for a significant proportion of “strike volumes” (Dribbusch and Vandaele, 2007: 377). This is also the case in Australia where lockouts have increased at a time when the number of strikes and days lost to strikes have been in decline.

The proportion of working days lost to disputes involving lockouts has increased almost six-fold ... Even more noteworthy, just over half of long industrial disputes [defined by the ABS as longer than a month] between 1999 and 2003 were lockouts. Employer lockouts, not strikes by unions, were responsible for most of the long disputes in the second half-decade of enterprise bargaining. (Briggs, 2004: ).

Similar to Australia and Germany, Canadian data also demonstrate shifting proportions of strikes and lockouts. WIRD began collecting lockout data in 1976. From 1976 to 2012, 2037 lockouts were recorded. These lockouts represented 12.3% of all stoppages, involved almost 8% of workers who engaged in stoppages, and represented 21% of work days lost. The peak period for lockouts was the period from 1983 to 1986: the 474 lockouts during these years represent 23% of all lockouts from 1976-2012.

From 2002, the data indicate another surge of lockouts. For example, 19% of stoppages in 2002 were lockouts, 20.4% of stoppages in 2003, 19.2% of stoppages in 2004, 18.3% in 2006, almost 21% in 2009, almost 23% in 2010 and 21% in 2011. For 2013, there were 53 lockouts, which represent 36.5% of all stoppages that year (the highest figure since recording of lockouts began).<sup>7</sup>

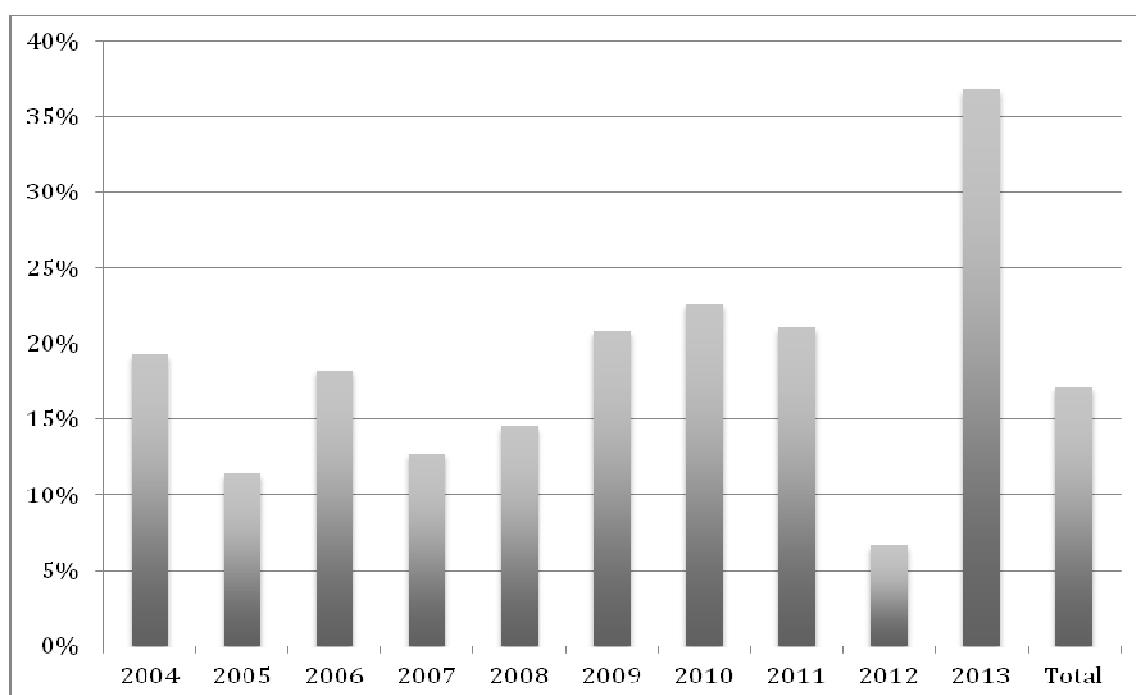
For the last decade, although the number of lockouts is significantly less than the lockout high points in the 1980s, the percentage of stoppages which include lockouts are increasing. So from 1983-1986, the lockout proportion of stoppages was 18%. However, in

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<sup>7</sup> The full data set for 2013 is not yet available. Twenty-six of the fifty-three lockouts involved car dealers in Quebec.

the current period, these numbers are inching higher. See *Table One: Lockouts as Percentage of Total Stoppages*.

**Table One: Lockouts as a percentage of total stoppages, Canada, 2004-2013**



Data from the Workplace Information and Research Division (WIRD) of Employment and Social Development Canada (ESDC), Canada

Also relevant is the number of workdays lost to lockouts, and the proportion relative to strikes. In 2011, almost 50,000 workers were locked out, more than half (56%) of all workers involved in stoppages that year, and the most workers locked out since 1986. From 2006, lockouts consistently account for more than a third of work days lost, and in some years, the proportion is higher, so for example, in 2007, almost 41% of work days lost were to lockouts. In Canada as in other countries, lockouts tend to be longer than strikes. From 2003-2012, 21.5% of all lockouts lasted between 16-52 weeks, and 8.4% lasted longer than 52 weeks. The comparable figures for strikes are 9.8% and 3%.

When strikes and lockouts are disaggregated, significant patterns emerge, not only around the decline in strikes which is reflected in the changing balance of strikes and

lockouts, but also in the proportion of stoppage days lost to lockouts, and the length of lockouts compared to strikes. Given this trajectory, differentiating between strikes and lockouts should be a statistical priority. I concur with van der Velden who suggested that rescuing the lockout from aggregate figures of industrial disputes is “an important scientific duty” (2007: 15). Furthermore as employers increasingly initiate lockouts as pro-active offensive strategies rather than as defensive responses to worker militancy, the permeability of strikes and lockouts decreases, and the ability to distinguish between them increases.

### **The lockout offensive**

This paper suggests that lockouts have moved from what are traditionally understood as defensive responses to worker militancy to overtly offensive strategies which support the anti-union agendas of both employers and states. However, despite even the multi-variable data collected in Canada, there is no statistical way to distinguish offensive and defensive lockouts, that is, a strike or wildcat which prompts an employer lockout, or an employer-initiated lockout. To pursue this line of inquiry, research needs to seek qualitative sources. For Canada, the detailed data record on each lockout facilitates research to enrich statistical profiles and identify employer offensives. Most information about lockouts are found in newspaper archives and on-line sources. *Libcom*, originating in the UK offers news and analysis of workers’ struggles including a list of lockouts worldwide from 2005 to the present.<sup>8</sup> Similarly *LabourStart*, an online union news service which aims to serve the international trade union movement, collects and disseminates information and has a list of over 1000 lockouts worldwide from 2008 to 2014.<sup>9</sup> *Labor Notes* is a media and organizing project in the United States that has been the voice of union activists since 1979. It has a node which collects articles and information about lockouts.<sup>10</sup>

Although this paper argues that offensive lockouts and employer anti-unionism have been increasing in recent decades, this is not to imply that either are new phenomena; rather recent decades have witnessed a significant resurgence in anti-unionism of which lockouts

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<sup>8</sup> <http://libcom.org/tags/lockouts>

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<http://www.labourstart.org/cgi-bin/newsquery2.pl?searchtext=lockout&number=1000&language=en&Go=Go>

<sup>10</sup> <http://labornotes.org/search/node/lockout>



are one such manifestation. Arthurs et al. drew a link between the economic recession in the 1980s and the increase in lockouts in Canada (1993: 268). In his 1996 study, Leroy found that the lockout was the main weapon of employers in the 1990s. Mounting evidence supports LeRoy's findings about the increase in lockouts as an aggressive employer tactic in current decades. Sears (2012) characterized 2012 as "the year of the lockout" in Canada:

A wave of lockouts is a sign that employers are on the offensive, sensing they are in a position to win considerable concessions from workers by forcing them onto the picket lines ... The goal is to restore profitability by completing the neoliberal transformation begun over the past 30 years, wiping out the remains of social programs and benefits associated with the post-World War Two welfare state while destroying 'good' working-class jobs with decent pay, security and benefits, and replacing them with more precarious employment (1-2).

Phillips (2014) writes about "lockout madness" in his discussion of a "new brand of employer militancy" in Australia. He notes that under the Fair Work Act, employers are entitled to take industrial action of their own in response to action by workers. However, "it is often used as a disproportionate response to minor industrial action by workers." In the US in 2011 alone, at least 17 employers imposed lockouts, one of which was American Crystal Sugar, the largest beet producer in the US. This lockout in Minnesota lasted 22 months (Greenhouse, 2012).

The following discussion does not offer a comprehensive overview of lockouts, given the brevity of the paper; however, although not exhaustive, the plethora of examples and mini-narratives from many countries does present suggestive evidence of the anti-union thrust of such events, and the need for further research. Four significant themes emerge in a study of recent lockouts: first, the adoption of lockouts by employers in an increasingly wide range of sectors; second, the lockout as an employer tool for casualizing a unionized workforce and increasing the precarity of work; third, the use of lockouts by multi-national corporations which leverage their cross-border status to intimidate workers; and finally, the role of the state in responding to lockouts, most often in support of employer positions.

First, lockouts are no longer confined to expected sectors such as mining and manufacturing. Noteworthy are lockouts in sports, orchestras and the health care sector, including nurses. For example, in Connecticut (USA), the West River Nursing Home

locked out 100 workers. Greenhouse (2012) comments that “companies see lockouts as a way to wrest concessions and set an example for workers at their other facilities”. Not surprisingly, the sports lockouts have garnered extensive attention: for example, the NFL lockouts in 2011, the NHL lockouts in 2004-5 and 2012-13, the baseball lockout of 1990 and basketball lockout of 1998-9.

Perhaps unexpectedly, orchestra managements have turned to lockouts as a strategy to reduce wages. In the US in 2012 alone, musicians at the Atlanta Symphony, the Indianapolis Symphony, the Minnesota Orchestra, and the St. Paul Chamber Orchestra were locked out. Ridge (2012: 2) reports that “unprecedented, aggressively anti-union tactics from symphony managements and boards have forced orchestra musicians to accept cutbacks in many places. The musicians of the Indianapolis Symphony, for instance, recently ended their lockout by accepting a 32 percent pay cut”. In 2001 in Canada both the Winnipeg and Calgary orchestras faced lockouts which resulted in serious pay cuts.

Second, lockouts are an employer strategy for casualizing a unionized workforce and increasing the precarity of work. The IKEA example in Canada is instructive. IKEA has over 200 stores in 31 countries, employing over 75,000 people and generating over 12 billion in sales annually.<sup>11</sup> In 1961, it moved production to Soviet Poland to minimize labour costs.<sup>12</sup> Owned by one of the world’s richest men, Ingvar Kamprad, IKEA is a multinational corporation which has been accused of labour rights violation in many countries including in the United States, Turkey, Russia, France, Italy and Ireland. In fact, in a recent scandal, IKEA admitted that East German political prisoners had been used to make its goods for as long as three decades (Milmo, 2012). It is also revealing that IKEA supports LabourWatch, a Canadian anti-union organization of employers and law firms, one of whose major goals is to decertify unions.<sup>13</sup>

The 17-month lockout of 350 IKEA workers in Richmond (British Columbia, Canada) began in May 2013 and ended in June of 2014. The unionized workers (Teamsters local 213) belong to one of only two unionized IKEA stores in the country. The major issues in the lockout related to employer initiatives to increase precarity: first, a two-tier wage structure – the very system that these workers had successfully resisted in a 2006

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<sup>11</sup> <http://entrepreneurs.about.com/cs/famousentrepreneur/p/ingvarkamprad.htm>

<sup>12</sup> <http://www.forbes.com/profile/ingvar-kamprad/>

<sup>13</sup> <http://www.labourwatch.com/about>

strike; and second, the demand to raise the minimum hours for full benefits from 20 per week to 24 per week (Bush and Nesbitt, 2014). IKEA has been found to be in breach of the British Columbia Labour Relations Code on numerous occasions (UNI, 2013: 3). It had tried to coerce employees to cross the picket line, and attempted to intimidate workers by constantly filming the picket line.

An International Fact-Finding Commission on the lockout by UNI<sup>14</sup> found that "IKEA Richmond's management has abandoned the stated values of the 'IKEA family' by adopting a radical anti-worker agenda that opposes unionization and encourages union decertification." (2013: 2). Peter Lövkvist, general secretary of the Nordic Transport Federation and chair of the International Fact-Finding Commission commented:

"IKEA has clearly violated its own code of conduct, as well as international labor standards. Locking out and intimidating workers, and hiring lawyers with histories of attacking workers and unions - behavior I witnessed personally in Canada - none of this is acceptable. In Sweden, IKEA would never treat its workers this way or disobey international conventions on labor rights" (Teamsters, 2013).

This IKEA lockout also points to the role of multinational corporations in the attack on unions and unionized workers. In fact, many of these MNC take inspiration from the anti-union practices in the US. "IKEA's hardball tactics in BC may reflect a creeping Americanization of labor-management relations in Canada" (Logan quoted in Tieleman, 2014).

Significantly, where casualization of the labour force is already widespread, the number of lockouts has decreased. For example, in Spain in the 1970s there were hundreds of lockouts. Raymond (2006) claims that the deregulation of work which fostered a massive use of part-time and temporary contracts has made lockouts unnecessary.<sup>15</sup>

Third, what is apparent in the IKEA example and many others is the anti-union agenda of multi-national corporations that use lockouts and leverage their cross-border status to intimidate workers. In fact, the lockout is increasingly part of the arsenal of strategies employers use to shift production from one plant or one country to another, and

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<sup>14</sup> UNI Global Union represents more than 20 million workers from over 900 trade unions in the fastest growing sectors in the world – skills and services <http://www.uniglobalunion.org/about-us>

<sup>15</sup> Thanks to Beltrán Roca for pointing me to Raymond's work.

to permanently close plants. In many cases, the underlying goal is to by-pass employment law, regulations and due process, and thereby avoid paying or significantly reducing legally-required redundancy benefits to workers. A significant example involved the UK subsidiary of the Austrian multi-national Mayr-Melnhof Packaging (MMP) which controls 32 factories in 15 countries. In what was seen as an unprecedented move and what many claimed was the first major lockout in UK since 1958, management at the Merseyside plant near Liverpool locked out workers on 18 February 2012, following a series of 24 hour strikes. It also fired more than 50 workers including four union representatives to pressure the remaining workers to accept poorer redundancy payments. The union claimed that MMP was in “in breach of both British law and commonly accepted international labour standards” (Norwegian government..., nd) Despite a short-lived factory occupation, cross-European mobilization of MMP workers, and interventions with company shareholders of MMP including the Norwegian government, on 29 March 2012, MMP closed the factory. Although UNITE, the union representing the workers, referred to MMP as a “rogue” employer, evidence suggests increasing number of similar cases (Murray, 2012a and 2012b and Millington, 2012).

Finally, numerous lockouts demonstrate the collusion between states, governments and employers. One might expect such government intervention to stop lockouts when public services, such as education, are involved. But evidence suggests that governments intervene to end lockouts not only in support of public sector but also private sector employers. There are numerous examples, such as the 2013 lockout of teachers in Denmark, and the 2011 lockout at Qantas Airlines in Australia.

In April 2013, 44,000 members of the Danish Union of Teachers (DLF) were locked out for almost four weeks. Three noteworthy points: first, the collusion of government and the employers, in this case, the Local Government Denmark (LGDK) which is an association of 98 Danish municipalities which negotiates with the Confederation of Teachers Unions (LC); second, the serious challenge to the Scandinavian model of bargaining in which unions and employers work without government interference; and third, the attack on public sector workers.

The government’s intervention began in 2011 when it collaborated with the LGDK to change the rules for teachers’ working hours. Bargaining began in December 2012. On

27 February the employers “unilaterally established that collective bargaining had broken down” even though “only a few hours of exchange of views” had occurred. LGDK issued a notice of lockouts for a April (one month notice is required) (DLF, 2). This was the first time in Denmark that “public employers have made use of the lockout without a prior strike” (DLF: 2-3).

On 25 April, the government intervened in support of the LGDK. The DLF points out that the government’s intervention offered unanimous support for the employers’ positions, in particular, the removal of any regulations or law on teachers’ working hours. Fred van Leeuwen, the General Secretary of Education International condemned “the Danish Government’s decision to push an emergency act through Parliament which will unilaterally force through the employers’ demands. The breakdown of collective bargaining in a country well-known for its well-established social-dialogue institutions is a tragedy” (Education International, 2013).

The 2011 lockout at Qantas Airlines is also instructive, and may be a “turning point in the contest between job security and labour flexibility” in Australia (Forsyth and Stewart, 2012: 830). The narrative involves management desire to outsource unionized work and to weaken job security provisions; employer invocation of a massive and disruptive lockout which grounded all domestic and international flights on 29 Oct 2011, what Australian Senator Nick Xenophon called “militant management” (Qantas, 2011); government intervention on 31 Oct 2011 to stop the lockout in order to prevent serious economic consequences; and finally Fair Work (FW) tribunal rulings in favour of management’s position. This sequence of events meant that the employer did not need to resolve contentious issues through collective bargaining but rather provoked the government to intervene, and relied on it to make decisions in the employer’s favour, which it did. The FW tribunal ruled against union demands for capping the number of contractors, for a 5% wage increase (they were awarded 3%), and for restriction on overtime hours for permanent workers. The Tribunal did rule that Qantas could not resort to compulsory redundancies to hire more contractors. Qantas hailed the overall judgment as evidence it was “entitled to run its business free from union control” (quoted in O’Sullivan, 2012).

Tony Sheldon, the national secretary of the Transport Workers Union (TWU) commented that “Qantas used the threat of more chaos to get its own way” (Lauder, 2011).

Forsyth and Stewart (2012: 797, 827) agree: “The motivation for the lockout was clearly ... to bring the dispute to a head by creating a circumstance in which the federal government would be forced to intervene ... And if the company was banking on getting out of the resulting proceedings with no real concession to the union's job security claims, other than those it was already prepared to offer, then that faith has clearly been rewarded. Certainly, the airline regards itself as the victor in the dispute.” In fact, they conclude that

The endorsement of the airline's strategy and support for the concept of 'managerial prerogative' ... may have long-term implications for workplace regulation in Australia (785) ... it can be expected that some major employers will now be considering the merits of adopting a Qantas-style strategy of engineering an arbitrated outcome to difficult enterprise agreement negotiations with a highly unionised workforce (829).

Although most examples of government intervention favour employers, in the following two examples, labour relations boards ruled in favour of workers. Two companies trying to use lockouts to force major concessions were found guilty of bargaining in bad faith. In the case of Buhler Versatile Inc in Manitoba (Canada), a dispute began with a strike in November 2000. In March 2001, the workers voted to end the strike and return to their jobs. In response, the company locked them out. The firm cut its offer to workers and threatened to shut down the facility and relocate to North Dakota. In a victory for the workers, the Manitoba Labour Relations Board (MLRB) found that Buhler did not bargain in good faith. In the end, the company agreed to pay \$17 million dollars in back pay, severance pay and pension top up (Parkinson, 2001).

A parallel case in the US involved 225 workers at Kellogg company in Memphis who were locked out for ten months beginning in Oct 2013. “To step up pressure on the workers, Kellogg cut off their health insurance as soon as the lockout began. It kept the plant operating with replacement workers hired by a staffing agency” (Greenhouse, 2014). However in July 2014, US district Judge Mays ordered an end to the lockout. He ruled that Kellogg effectively demanded changes to the wage rates of new or rehired regular employees. “Those rates are set in the master agreement. The good-faith bargaining required by the (National Labor Relations) Act does not allow Kellogg to use creative semantics to force midterm changes in the wages of new or rehired regular employees in violation of the master agreement” (Dries, 2014). Kevin Bradshaw, president of the union

local of the Bakery, Confectionery, Tobacco Workers and Grain Millers (BCTGM) commented: “Locked out, but not beaten, mistreated but unbending, disillusioned by this company's disgusting reward for faithful service, but not disheartened”.<sup>16</sup>

## **Conclusion**

This paper has situated the discussion of lockouts within the larger context of legislative attacks on union rights, government austerity measures which target public sector unions, and employer aggression. The discussion of lockouts addressed definitional issues, the difference between offensive and defensive lockouts, and the available statistical data. Although many countries do not differentiate between strikes and lockouts, in those countries that do (namely, Canada, Australia and Germany), the data reveal distinctive patterns, in particular, the increasing proportion of stoppage days linked to lockouts, and the tendency for lockouts to be considerably longer than strikes.

The paper considered four themes: first, the adoption of lockouts by employers in an increasingly wide range of sectors; second, lockouts as an employer tool for casualizing unionized workforces and thereby increasing the precarity of work; third, the use of lockouts by multi-national corporations which leverage their cross-border status to intimidate workers; and finally, the role of the state in responding to lockouts, most often in support of employers. The paper concludes that lockouts have moved from what are traditionally understood as defensive responses to worker militancy to overtly offensive strategies which support anti-union agendas. Finally, this paper highlights the importance of collecting statistical data on and doing research about lockouts.

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<sup>16</sup> [www.wmactionnews5.com](http://www.wmactionnews5.com)

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